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Universal Periodic Review

Report of the Working Group on the Universal Periodic Review*

Ecuador

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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1. On 1 May 2017, Ecuador underwent its third universal periodic review, in the course of which it informed the international community of the progress achieved by the Government in meeting the commitment to protect and promote human rights in the country.

2. During this process, Ecuador reiterated that it recognized the universal periodic review as the main universal mechanism for the monitoring and evaluation of the human rights situation and that Ecuador considered that it was fundamentally important for the mechanism to maintain its constructive, objective and non-politicized character, through an interactive dialogue in which the recommendations formulated were consistent with the reality of the State under review. Only in this way could the universal periodic review maintain its credibility and legitimacy.

Response to recommendations deferred during the review of Ecuador:

3. With regard to recommendation 119.1, in Ecuador crimes against humanity and war crimes are not subject to a statute of limitations, as stipulated in both the Constitution (art. 80) and the Comprehensive Criminal Code (art. 16 (4)). Two prosecutions for crimes against humanity are currently before the courts (the Vaca, Cajas, Jarrín case and the Arturo Jarrín case). The Government **accepts the recommendation** and accordingly will study the appropriateness of acceding to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

4. With regard to recommendation 119.2, the Government reports that internationally accepted human rights standards processes have been incorporated in domestic law: thus the Comprehensive Criminal Code now defines the offences of genocide, crimes against humanity, war crimes and the crime of aggression. In recent years, the National Assembly has taken steps to assess the relevance of the Amendments to the Rome Statute of the International Criminal Court on the crime of aggression (Kampala amendments) with a view to their ratification. This internal process will continue under the administration of President Lenin Moreno, subject to the favourable opinion of the Constitutional Court. **Ecuador therefore accepts the recommendation**.

5. With regard to recommendation 119.3, Ecuador believes that the Arms Trade Treaty of 2013 does not address the structural problem of the arms trade because it maintains an asymmetrical approach and creates a double standard for exporting and non-exporting countries. Ecuador does not believe, in other words that there is any direct link between the ratification of the Treaty concerned and the comprehensive protection of human rights. With regard to the part dealing with the international trade in light weapons, Ecuador has maintained a clear position on the need to regulate this type of trade as a means of safeguarding people's lives and reducing the incidence of violence around the world; such control should be applied in strict conformity with the decisions adopted by each sovereign State to regulate trade in such weapons, as well as the right of States to acquire the means necessary for their legitimate defence.

6. Ecuador does not agree with granting States which export light weapons the right to assess the human rights protection policies of arms-importing countries or to set arbitrary conditions for distinguishing between States considered worthy of purchasing light weapons and those that supposedly are not. For the aforementioned reasons, **Ecuador takes note of this recommendation**.

7. **Ecuador accepts recommendation 119.4, which is in fact in the process of being implemented**. In this regard Ecuador points out that it has a national plan to combat human trafficking, smuggling of migrants, sexual, labour and other forms of exploitation, and prostitution of women, children and adolescents, child pornography and corruption of minors, which is implemented, monitored and evaluated by an inter-agency commission composed of 17 State institutions, including the Ministry of the Interior, the Ministry of Justice, Human Rights and Religious Affairs, the Ministry of Foreign Affairs and Human Mobility; the Ombudsman's Office and the Attorney General's Office. This commission works in the following areas: (a) protection and reparation, (b) prevention and (c) investigation and punishment. The Protocol of 2014 to the Forced Labour Convention, 1930 of the International Labour Organization is being studied with a view to ratification

by the relevant national institutions in order to verify its alignment with the high standards for the protection of workers' rights enshrined in domestic legislation.

Clarification concerning recommendations that were noted during the review process:

8. With regard to recommendation 120.1, Ecuador wishes to clarify that under the Organic Act on Identity and Civil Data Management (art. 86), the *cédula de identidad* (identity card) is the only State-issued identity document. Article 94 of the Act states that "upon reaching the age of majority, the person may, once only, decide to replace the sex category on their identity card with a gender category, with the option of male or female".

9. With regard to recommendations 120.2 and 120.3, it may be noted that all persons under Ecuadorian jurisdiction, whether nationals or aliens, have the same rights and obligations as established in the Constitution (art. 9), without any discrimination based on belonging to an ethnic minority. The principles of universal citizenship and free movement are applied in accordance with the Organic Act on Human Mobility, thus guaranteeing the full enjoyment of rights of all persons within Ecuadorian territory.

10. With regard to recommendation 120.5, Ecuador wishes to report that the judiciary has been profoundly transformed through the modernization of the system of administration of justice, which began with the Constitution of 2008 and the laws adopted as a result.[1] Independent justice is guaranteed by the process of appointing justice officials through merit-based competitive examinations that include rigorous selection phases, in which citizens are allowed the right to object to candidates. This ensures that the selected professionals have high levels of training and experience and also enjoy social legitimacy in the exercise of their functions. As a result, confidence in the justice system in Ecuador is among the highest in the region.

11. With regard to recommendations 120.6, 120.7, 120.8, 120.9 and 120.10, the Constitution (art. 233) establishes that no public servant shall be exempt from being held accountable. Thus judicial staff are bound by specific obligations and prohibitions (arts. 100 and 103 of the Code of the Judiciary), which give rise to administrative liabilities and sanctions in the event of non-compliance (arts. 107, 108, 109 of the Code of the Judiciary). In terms of doctrine, the figure of "inexcusable error" refers to manifest incompetence and legal inconsistency in the moment that the law is applied by the administrator of justice. In that sense, a miscarriage of justice constitutes an inexcusable error insofar as the justice official departs from any reasonable interpretation based on the rules of logic and legal significance.

12. Furthermore, the figure has been defined by the Inter-American Court of Human Rights in a number of rulings, such as in the case *Apitz Barbera et al. v. Venezuela*, wherein it indicated that "judicial error has been held to be inexcusable [...] when 'it cannot be justified through reasonable legal criteria, something which turns it into a serious offence, deserving the maximum disciplinary sanction, that is, removal from office'". The legal position of Ecuador is therefore no different from that of other countries in its interpretation of the concept of "inexcusable error".

13. With regard to recommendations 120.11, 120.13 and 120.14, Ecuador states that the Organic Act on Communication guarantees the right of all persons to freedom of expression and opinion, in any form and through any medium; the Act also establishes the accountability of those persons for their expressions (art. 17) and for the dissemination of content injurious to human rights, reputation, honour, the good name of individuals and the public security of the State (art. 19). In such cases, the Act recognizes that the media bear joint responsibility for civil damages and compensation, subject to due process. Ecuador therefore emphasizes that national legislation is in line with the Universal Declaration of Human Rights (art. 19), the International Covenant on Civil and Political Rights (art. 19) and the American Convention on Human Rights (art. 13).

[1] Code of the Judiciary (2009)
Comprehensive Criminal Code (2014)
General Procedural Code (2015)

14. With regard to recommendations 120.12 and 120.15, Ecuador states that the main purpose of the domestic legislation in question (Executive Decree No. 16, as amended by Executive Decree No. 739) is to include and allow greater participation for all forms of civil society organization. These decrees set forth the rights and obligations of social organizations, do not restrict any of their rights and are consistent with the Constitution, the Universal Declaration of Human Rights (art. 20), the International Covenant on Civil and Political Rights (art. 22) and the American Convention on Human Rights (art. 16).

15. This commitment to the freedom of association has also led to an increase in the number of organizations registered in the unified information system on social organizations, from 1,270 in 2011 to 90,464 at present.

16. With regard to recommendation 120.17, Ecuador states that according to the Comprehensive Criminal Code (art. 150), abortion is decriminalized in two specific cases. The Government has therefore adopted the guide to clinical practice entitled "Therapeutic Abortion Care", which allows the provision of diagnosis, assessment, care and timely treatment in therapeutic abortion cases, thus contributing to the reduction in maternal morbidity and mortality and the improvement of health care for women requiring therapeutic abortions.

17. Regarding recommendation 120.18, the Civil Code (art. 140) states that "either spouse, subject to consent, may conduct the ordinary administration of the marital estate (...)".

18. Lastly, in respect of recommendation 120.19, Ecuador emphasizes that prior consultation is a State policy referred to in the Constitution (art. 57 (7)) and other legislation, such as the Organic Act on Citizen Participation. In keeping with this constitutional mandate, Executive Decree No. 1247 has been issued, adopting regulations on consultation required prior to the bidding and allocation of hydrocarbon areas and blocks. Thank to these regulations, the country's indigenous peoples and communities have played a proactive role in 94 consultation processes preceding the authorization or approval of oil projects or activities that might affect their lands or livelihoods.

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